

**BISHOP E. W. JACKSON SR.**  
**1012 Eddington Court**  
**Chesapeake, VA 23322**

**Exhibit A**

**Tel. 757-546-8615**  
**Fx. 757-546-1848**

June 1, 2000

Federal Communications Commission  
Enforcement Bureau  
Investigations and Hearings  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

To Whom It May Concern:

On Wednesday, May 24, 2000 at 8:00 PM I viewed a program called Dawson's Creek on the WB Network, Channel 2 on Cox Cable in Chesapeake, Virginia. This program was obscene and indecent. I am writing to formally complain about such a program being shown during the family viewing hours, which I understand to be between 6AM and 10PM.

First the program includes a teen aged girl telling a boy (her boyfriend I suppose), how "unreasonable" it was for her not to sleep with him on prom night. There is a grandmotherly type who watches approvingly as she also says to the boy, "I've been with lots of guys, but I didn't love any of them so that makes me just as much of a virgin as you are." That may not be an exact quote, but I am unable to supply a videotape recording to document exactly what was said. I know that what I have quoted you is very close. I am sure that you can get the video from the show itself.

Second, is that this program had a male homosexual kiss take place. The program was clearly intended to promote the normality of homosexuality. Having two young men kissing in the mouth on a show targeting teens is also obscene and indecent. The program should clean up their act or be taken off the air. To top it all off, the boy's father (the one who kissed another boy) says to him, "I didn't ask to have a gay son, but I'm sure glad I got one." He also commended his son for "having the courage" to put himself out there. Every father I am sure can be proud of the son who kisses another boy in the mouth in public. That is not courage, it is exhibitionism, and the whole handling of the subject was obscene, indecent and propaganda.

My understanding is that the FCC is responsible for regulating programming during the family viewing hours. The things which appear on TV during those hours are not fit for family viewing or for viewing by any well adjusted human being for that matter.

I am requesting that the FCC take action to correct this situation. In fact the same type of programming is happening with Ally McBeal. On that program, Monday, at 9PM there is a steamy sex scene in a car wash between Ally and a stranger. Is that family viewing? Please take action NOW!

Wednesday, May 24, 2000

LaJuana Chandler Burks  
727 Milby Dr.  
Chesap. VA 23325

Federal Communication Commission:

Tonight in viewing the season finale of "Dawson's Creek", I found this episode to be appalling, indecent and obscene. With the moral decline in this country, you don't need to be contributing to it by showing homosexuality and premarital sex - and condoning it - as if its O.K. It's not O.K., not to mention showing such filth during family viewing times and your target audience is young adults. Isn't life for teenagers already a struggle having to deal w/ peer pressure, school and life w/ out being sent the wrong signals on T.V. You should put more consideration on what you allow to be seen on T.V. You need to seek guidance from the Lord God Almighty, and when you consult with Him, first you won't go wrong ever!

LaJuana B.

ALVA Thomas  
26D Battlefield Woods Court  
Chesapeake, Va 23322

TO: Federal Communication Commission

From: Alva Thomas

I am writing this letter to express my disgust toward the season finale on Dawson's Creek. This show was aired on MAY 24, 2000 at 8:00 PM. in Virginia. As a mother of two children going on three<sup>(children)</sup>, this show which was allowed to air is unacceptable. Two men kissing, or two homosexuals kissing on national television is indecent and appauling to my family, in fact to the whole structure of family (what is known as a natural family - father, mother, children). The homosexual community should NOT be allowed to force their life style or sexual preference on those of us who are NOT accepting this as natural human behavior! I strongly feel that steps should be taken against whom ever is responsible for airing such filth (Men Kissing Men, or proclaiming that homosexuality is the "IN THING TO DO") I don't instill this in my children AND I DO NOT WANT TELEVISION instilling it in them either! Alva Thomas

To the Federal Communication Commission,

I SAW the EPISODE of Dawson's Creek May 24th.

I was amazed at how far we've come from Family Programming of the 80's to totally disgusting JUNK. This Kind of Show Shouldn't Be shown at Any time slot on Any station, I found it OBSCENE and indecent and Against Family and Christian values. It was clear the this was another push by the Gay Community to normalize their agendas by the powerful influence of the media. It is a travesty and demoralizing and Shouldn't Be shown.

Aaron Bridges  
1230 Danylen Arch  
Chesapeake, VA 23320

20: the Federal Communications Board  
From: Mrs. Bridget  
12300 MYRIAN AVE. CHES. Vg. 23320  
On Wed. 5.24.2000, I was  
sadder to see a wedding  
take place then a couple of  
segments later (shortly) a young  
man was at a all boys school  
discussing a ex-boyfriend sudden-  
ly they kissed. I've never seen  
this show "Dawson's Creek" and  
the guy said "ex-boyfriend"  
which means this is a seg-  
ment that's been airing for  
a while. What's really  
crazy is two boys were in the  
background like they were  
studying or ignoring the nasty  
kiss. Being "gay" is not OK!?!  
They sat in the background  
and said or did nothing meaning  
leave or talk to them as far  
as guidance. I sure the show  
can focus on good family values.  
Overall, the whole show is awful!  
including the grandma that supports wrong  
doing.

Thank you

Mrs. Bridget

PS. If Dawson's Creek  
is a indecent show!  
\* Shame on the show!

Karen Perotti  
1212 Fairhaven Rd  
Chesapeake, VA 23322

May 25, 2000

Federal Communications Commission  
Enforcement Bureau/Investigations + Hearings  
445 12<sup>th</sup> SW.  
Washington, DC  
20554

To Whom it May Concern,

I am writing to inform you that I  
am upset and disgusted by May 24, 2000  
episode of Dawson's Creek on WB. This  
episode, which airs from 8-9pm, involved  
obscene footage of 2 homosexuals kissing.  
The action of the kiss and the homosexual  
storyline is indecent and inappropriate  
for viewing on television.

As a concerned citizen of the  
United States I am issuing this complaint  
and implore the FCC to take action  
and ban these scenes + dialog from  
television programs with obscene situations.  
are supposed to be regulated. Please look  
into this matter and do all you can  
to stop these shows from airing.

I thank you for your time and  
hope you will take this matter  
serious; this was truly a disgrace to  
see.

Sincerely,  
Karen L. Perotti

26-D BATTLEFIELD WIDE,  
CHESAPEAKE VA 23322

5/24/00

The Federal Communication Commission:

To Whom It May Concern:

My name is Paul Thompson and I recently saw the May 24th airing of Dawson's Creek, and I have to say that I found this episode appalling.

I found it indecent and obscene not only for young viewers but all viewers, especially this one.

I find it interesting that networks are playing down the family oriented shows, but go to no lengths to promote filth "THE FIRST MALE HOMOSEXUAL KISS"

I don't care what the Gay Activist say, this is totally against what the word of God says, and I don't want this aired in my home.

Cont

I remembered a time  
when T.V. could bring families  
together. Please don't think  
that this will be

Yours Truly  
Rev. Paul F. Howard



Wednesday, May 24, 2000

LaJuana Chandler Burks  
727 Milby Rd.  
Chesap. VA 23325

Federal Communication Commission:

Tonight in viewing the season finale of "Dawson's Creek", I found this episode to be appalling, indecent and obscene. With the moral decline in this country, you don't need to be contributing to it by showing homosexuality and premarital sex - and condoning it - as if its O.K. It's not O.K., not to mention showing such filth during family viewing times and your target audience is young adults. Isn't life for teenagers already a struggle having to deal w/ peer pressure, school and life w/ out being sent the wrong signals on T.V. You should put more consideration on what you allow to be seen on T.V. You need to seek guidance from the Lord God Almighty, and when you consult with Him, first you won't go wrong ever. LaJuana B.

## Exhibit B

**Federal Communications Commission  
Washington, D.C. 20554**

Dear Consumer:

The FCC is prohibited by law (Section 326) of the Communications Act from censoring broadcast matter and taking action that would interfere with free speech in broadcasting, a freedom also guaranteed in our Constitution's First Amendment.

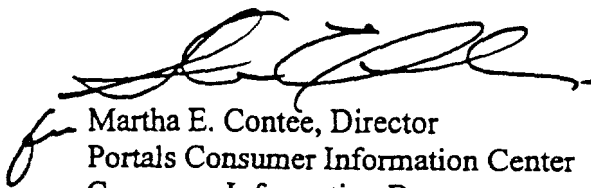
Individual radio and television station licensees are responsible for selecting all broadcast matter and for determining how their stations can best serve their communities. Licensees are responsible for choosing the entertainment programming and the programs concerning the local issues, news, public affairs, religion, sports events and other subjects to be aired by the station. They also decide how their programs, including call-in shows, will be conducted and whether or not to edit or reschedule material for broadcasting. The Commission does not substitute its judgment for that of the broadcaster in this process, and it does not act as an advisor to stations on artistic standards, grammar or quality of content.

We recommend listeners and viewers to make their concerns known to the management personnel of the broadcast station involved whenever they believe the station's programming merits it. Such comments help to keep broadcasters informed about audience opinion and can influence programming.

The Commission's enforcement action regarding indecent programming complaints are based on the review of the documentation sent in by the public. Because of the sensitive nature of such complaints, I am enclosing information on how to file a complaint regarding indecent and/or obscene programming. Additional instructions on the FCC's regulations governing Broadcasting are available at: <http://www.fcc.gov/mmb/asd/main/fact.html>.

I hope the information is helpful to you.

Sincerely,



Martha E. Contee, Director  
Portals Consumer Information Center  
Consumer Information Bureau

Attachment

## FCC ENFORCEMENT OF PROHIBITION AGAINST OBSCENE AND INDECENT BROADCASTS

- It is a violation of federal law to broadcast obscene or indecent programming. The prohibition is set forth at Title 18 United States Code, Section 1464 (18 U.S.C. 1464). Congress has given the Federal Communications Commission the responsibility for administratively enforcing 18 U.S.C. 1464. In doing so, the Commission may revoke a station license, issue a warning, or impose a monetary forfeiture for the broadcast of obscene or indecent material.

### Obscene Broadcasts Prohibited at All Times

Obscene speech is not protected by the First Amendment and cannot be broadcast at any time. To be obscene, material must meet a three-prong test: (1) an average person, applying contemporary community standards, must find that the material, as a whole, appeals to the prurient interest; (2) the material must depict or describe, in a patently offensive way, sexual conduct specifically defined by applicable law; and (3) the material, taken as a whole, must lack serious literary, artistic, political, or scientific value. See *Miller v. California*, 413 U.S. 15 (1973).

### Indecent Broadcasts Restricted

The Commission has defined broadcast indecency as language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory organs or activities. See *Infinity Broadcasting Corporation of Pennsylvania*, 2 FCC Rcd 2705 (1987). Indecent programming contains sexual or excretory references that do not rise to the level of obscenity. As such, indecent material is protected by the First Amendment and cannot be banned entirely. It may, however, be restricted in order to avoid its broadcast during times of day when there is a reasonable risk that children may be in the audience. In the wake of decisions rendered by the United States Court of Appeals for the District of Columbia Circuit prior to 1995, the Commission concluded that it must restrict its enforcement actions to indecent programming aired during daytime hours, i.e., between the hours of 6:00 a.m. and 8:00 p.m. See *Action for Children's Television v. FCC*, 852 F.2d 1332 (D.C. Cir. 1988); *Kansas City Television, Ltd. (KZKC)*, 4 FCC Rcd 6706 (1989). In a decision issued June 30, 1995, the United States Court of Appeals for the District of Columbia Circuit, responding to challenges to the FCC's expanded enforcement authority as adopted by Congress, ordered the Commission to revise its rules so that indecent programming from 6:00 a.m. to 10:00 p.m. will be subject to enforcement action. *Action for Children's Television v. FCC*, 58 F.3d 654 (D.C. Cir. 1995), cert. denied, 116 S. Ct. 701 (1996). The Commission's new rule, see 47 C.F.R. 73.3999 adopted pursuant to the Court's mandate, went into effect on August 28, 1995. As a result, broadcasts — both on television and radio — that fit within the definition and that are aired between 6:00 a.m. and 10:00 p.m. are subject to indecency enforcement action.

### Filing Complaints

The Commission does not independently monitor broadcasts for indecent material. Its enforcement actions are based on documented complaints of indecent or obscene broadcasting received from the public. Given the sensitive nature of these cases, it is important that the Commission be afforded as full a record as possible to evaluate allegations of obscene or indecent programming. Complaints should be directed to the FCC, Consumer Information Bureau, Informal Complaints Team, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554, and should include: (1) a tape or transcript of the program or of significant excerpts; (2) the date and time of the broadcast; and (3) the call sign of the station involved. These tapes, of necessity, become part of the Commission's records and cannot be returned.

rev. 12/7/99

## EXHIBIT C

### **Memorandum in Support of Request for Congressional Hearings Regarding FCC Failure to Enforce The Broadcast Indecency Law Against TV Stations**

1. **Introduction**
2. **A difference between radio and TV indecency**
3. **Lessons from 'FCC v. Pacifica Foundation'**
4. **A lesson from 'Moll Flanders'**
5. **What the FCC tells the public**
6. **When 'should' really means 'is required'**
7. **Monitoring TV programs**
8. **Inquiry by Commission on its own motion**
9. **'V-chip' not a substitute for the indecency law**
10. **CONCLUSIONS**

Prepared by:

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Date: February 9, 2000

## 1. Introduction

Standards of decency on broadcast TV continue on their downward spiral. The precipitous decline has cheapened the quality of life for all Americans; caused untold grief to adults unwillingly subjected to indecency in the privacy of their homes; and adversely affected our nation's youth.

Much of the blame for the downward spiral falls on the TV networks, for pursuing high ratings with little sense of their responsibility to serve the public interest. Much of the blame also falls on the FCC, for failing to enforce the broadcast indecency law [18 USC 1464] against TV stations.

A big part of the FCC's problem is its policy of requiring viewers who complain about indecent programming to provide a tape or transcript of the program. Very few complaints about TV indecency include tapes, because most viewers who make complaints were surprised by the assault and weren't taping the program.

In most cases, however, tapes of TV programs exist; and the FCC's refusal to take steps are within its power to obtain a tape, even when it possesses information indicating that the law has or is being violated, is arbitrary.

It is not Morality in Media's contention that every profanity or mention of sex on TV violates the broadcast indecency law, but it stretches the imagination to believe that little if any of the constant vulgarity, adult sex talk, and promiscuous sexuality on TV is indecent.

Nor is it Morality in Media's contention that the FCC should investigate all TV indecency complaints. Many complaints describe programming that is not "indecent." Other complaints are too general. The FCC also has a limited staff.

But to refuse to investigate all (or virtually all) complaints unaccompanied by a tape or transcript does not fulfill the Commission's responsibility to "execute and enforce" the provisions of the Communications Act of 1934, as amended.

The refusal to investigate complaints unaccompanied by a tape or transcript hampers enforcement of the indecency law in two ways. First, it guarantees that the vast majority of complaints are ignored by the FCC. Second, it discourages many viewers and listeners from making complaints. For example, when someone

contacts Morality in Media about indecent TV programming, we tell them to complain to the FCC only if they have taped the program or ad -- which isn't often.

Morality in Media requests the Senate Subcommittee on Communications and the House Subcommittee on Telecommunications to hold hearings on the FCC's arbitrary requirement that complainants provide the FCC with a tape or transcript of the offending program and on the FCC's apparent "see no evil, hear no evil and think no evil" policy regarding TV indecency.

Morality in Media, Inc., is a nonprofit [501(c)(3)], national interfaith organization. Founded in New York City in 1962, MIM works through constitutional means to curb traffic in illegal hardcore pornography (obscenity) and to uphold standards of decency in the mainstream media.

## **2. A difference between radio and TV indecency**

In 1986, as a result of a public outcry, the FCC resumed enforcement of the broadcast indecency law after a hiatus of nearly 10 years. Since then, most of the FCC's indecency enforcement actions have involved radio "shock jocks."

"Shock jocks" often have a daily radio program, and the frequency and extent of their vileness can make them notorious enough to drive some citizens to monitor and tape the programs. When citizens provide tapes of "shock jocks," the FCC does, on irregular occasion, enforce the indecency law.

Apart from "Jerry Springer," there have been no broadcast TV programs airing during 6 a.m. to 10 p.m. that have become as notorious as, for example, the "Howard Stern" (real) radio program. But with "Springer," it was primarily violence which made the program notorious.

With very few exceptions, TV viewers who complain to Morality in Media about indecent programming were surprised by the assault and were not taping the program. We assume the same is true for the vast majority of TV viewers who complain to the FCC about indecent programming.

Unlike local live radio programs, which often are not recorded, the problem of indecency on TV overwhelming involves nationally distributed (by network feed, film or tape) recorded programs which are retained by the network or production company for future broadcast and distribution.

The Commission has broad subpoena power which is codified in title 47 of the U.S. Code at section 409(e). This subpoena power has been upheld against a non-licensee third party. See *FCC v. Ralph M. Cohn, Vice President and General Manager, Screen Gems, Inc., et al.*, 154 F.Supp. 899 (SDNY 1957).

In an Order released October 27, 1999 [*In the Matter of Establishment of the Enforcement Bureau and Consumer Information Bureau*, FCC 99-172, at p.7], the Commission specified that one function of the Enforcement Bureau is to:

Identify and analyze complaint information, conduct investigations...and collect information, including pursuant to sections...409(e)-(k) of the Communications Act, in connection with complaints, on its own initiative or upon request of another Bureau or Office.

### **3. Lessons from FCC v. Pacifica Foundation**

In *FCC v. Pacifica*, 438 U.S. 726 (1978), the Supreme Court upheld the federal broadcast indecency law. The underlying facts that gave rise to the *Pacifica* case are described in *In the Matter of a Citizen's Complaint Against Pacifica Foundation Station WBAI (FM), New York, N.Y.*, 56 F.C.C. 2d 94 (1975). In brief, a man was driving in his car with his young son. His car radio was tuned to New York radio station WBAI at about two o'clock in the afternoon when the station broadcast a selection, entitled "Filthy Words," from a George Carlin record album. The father wrote a letter to the Commission complaining about the broadcast, but was unable to include a tape or transcript.

Instead of rejecting the complaint because it didn't include a tape or transcript, the Commission forwarded a copy of the complaint letter to WBAI for comment, with a request for a recording of the program. The station replied that no recording had been made but identified the record album, which included the "Filthy Words" monologue. The FCC obtained a copy of the record.

In upholding the indecency law, the *Pacifica* Court (438 U.S. at 749) explained why most citizens who complain about an indecent broadcast cannot provide a tape or transcript:

Because the broadcast audience is constantly tuning in and out, prior warnings cannot completely

protect the listener or viewer from unexpected program content.

Viewers without "prior warnings" cannot set up a tape recorder in order to make a copy of the program for the FCC. But there is another lesson from *Pacifica*. In upholding the indecency law, the *Pacifica* Court said (438 U.S. at 750):

[B]roadcasting is uniquely accessible to children, even those too young to read...We held in *Ginsberg v. New York*...that the government's interest in the "well-being of its youth" and in supporting "parents' claim to authority in their own household" justified the regulation of otherwise protected expression.

Government has a *compelling* interest in protecting children from indecent TV programming; and it is the FCC's job (not that of viewers or parents) to enforce the indecency law. For the FCC to say in effect, "We will consider lifting a finger to protect America's children from TV smut only if a viewer is able to do all the necessary preliminary work for us," is *unconscionable*.

#### **4. A lesson from *Moll Flanders***

In October 1996, PBS stations on the East Coast aired "Moll Flanders" at 9 p.m. In a letter to Morality in Media, one irate Vermont viewer described the program as follows:

Masterpiece Theater on Sunday, October 13, featured "Moll Flanders" in living color, period costumes and lots of nudity. Nudity would not ordinarily offend me, except on this show it was featured while Moll and her 5 husbands (one of whom turned out to be her half-brother) were engaged in the marital act. The actors were shown completely uncovered, full length. Before Moll was married, we were treated to fornication with her future husband's brother. The show also featured, besides incest with her half-brother ...lust ...bigamy ...prostitution and to top it off, lesbianism, again in the nude. Quite a lesson in morality for our teen-age children, especially on Sunday. This



show is on at 9 p.m., early enough to be viewed in part, if not wholly, by 14-16 year olds. It was in two parts and continued on Monday evening, again at 9 p.m.

A resident of Maryland complained to the FCC about the "Moll Flanders" program. Along with her complaint, she sent taped excerpts from the program (recorded between 9 p.m. and 10 p.m.). She forwarded a copy of the FCC's response to Morality in Media. The response consisted of a sheet, **FCC ENFORCEMENT OF PROHIBITION AGAINST OBSCENE AND INDECENT BROADCASTS**, and a cover letter from Norman Goldstein, Chief of Complaints and Investigations Branch, that said in part:

This is in response to your complaint alleging that station WETA, Washington, DC, broadcast indecent material between 9 p.m. and 10:05 p.m. on October 19, 1996. In support of your complaint you submitted a video tape of...eight scenes (totalling approximately six minutes) from the program...[W]e cannot fully evaluate it from the brief excerpts you have provided. Your complaint does not provide sufficient context to enable us to determine whether the programming meets the Commission's definition of indecency. Also, please note that the Commission's authority to act against indecent programming is limited to broadcasts between 6 a.m. and 10 p.m. Accordingly, we must dismiss your complaint at this time.

The FCC could easily have requested a tape of the program from its neighbor, station WETA, in Washington, D.C. A tape certainly existed, because the PBS station in New York City subsequently rebroadcast "Moll Flanders."

## **5. What the FCC tells the public**

According to the Commission's published statement regarding FCC ENFORCEMENT OF PROHIBITION AGAINST OBSCENE AND INDECENT BROADCASTS (published on FCC web site at **[www.fcc.gov/mmb/enf/indecl.html](http://www.fcc.gov/mmb/enf/indecl.html)**) :

The Commission will act on all documented complaints of indecent or obscene broadcasting that

it receives. Given the sensitive nature of these cases, it is important that the Commission be afforded as full a record as possible.

...Complaints...should include: (1) a tape or transcript of the program or of significant excerpts; (2) the date and time of the broadcast; and (3) the call sign of the station involved. The tapes...must become part of the Commission's records and cannot be returned. [Underlining added]

On its face, this statement appears reasonable. The words "act on" imply that the FCC will investigate meritorious complaints. The words "should include" imply that the complainant should, when possible, supply requested information. But in most cases it is impossible for viewers to obtain a tape or transcript of a program. They weren't taping the program, and licensees do not voluntarily provide tapes to irate viewers.

## **6. When 'should' really means 'is required'**

To Morality in Media's knowledge, the FCC routinely dismisses meritorious complaints that do not include a tape or transcript, even when it is *impossible* for the viewer to provide one but *possible for the FCC to do so*.

In a January 30, 1990 letter, in response to a broadcast indecency complaint submitted by a Morality in Media staff member, Edythe Wise (then chief of the FCC's Complaints and Investigation Branch) responded in part:

In order to make reasoned judgments concerning possibly indecent material, the staff requires: (1) tape recordings or transcripts.... [Underline added]

In *Monroe Communications v. FCC*, 900 F.2d 351, 359 (D.C. Cir., 4/10/90), the Court of Appeals ruled that the FCC's refusal to consider, in a license renewal proceeding, an "ordinary" citizen's obscenity complaint because the complaint did not set forth a "prima facie" case of obscenity was "arbitrary:"

We agree that the Commission should not be required to investigate every generalized complaint alleging...obscene programming. However, to require ordinary citizens to...set forth allegations

constituting a prima facie case of obscenity...is arbitrary. For instance, among the complaints the Commission declined to consider...was a timely letter from a Chicago resident who reported being shocked to see a broadcast...clearly depicting adults engaged in sexual acts. The letter specified the date and time of the broadcast...To ignore this citizen complaint..., without at least learning more about the broadcast, because the complaint did not make out a legally sufficient claim of obscenity was arbitrary.

**In response to the *Monroe* case, then Morality in Media president Joseph J. Reilly, Jr., wrote on April 17, 1990 to then FCC chairman Sikes requesting that the FCC institute:**

[A] complaint policy at the staff level which precludes the requirement that complaints of...indecenty, in order to be considered[, ] must be accompanied by a video tape, or an audio cassette or a transcript.

**In response, then FCC general counsel Robert L. Pettit responded in part, in a letter dated May 18, 1990:**

I do not believe the [*Monroe*] Court intended to preclude the Commission from seeking reliable evidence, such as a recording or a transcript, as the basis for its inquiries into allegations of indecent or obscene broadcasting...With this in mind, the staff generally requires recordings, transcripts or significant excerpts from the objectionable programming. However, this is not an absolute requirement.

**In response to a letter of complaint about an indecent broadcast, the FCC's Edythe Wise (see above) wrote in a letter, dated September 10, 1991:**

In order to make reasoned judgments concerning possibly indecent...material, the staff requires:  
(1) tape recordings or transcripts of....  
[Underline added]

According to *Broadcasting* magazine (Harry A. Jessell, "FCC Puts Broadcasters on Notice for Indecency," 3/2/92):

The FCC receives thousands of complaints each year from viewers and listeners but considers only the relative handful each month that are substantiated by tapes or transcripts. Over the last six months, the FCC has received 53 [substantiated] complaints. [Underline added]

In an Order Released on April 5, 1993 (*In re Applications of EZ Communications, Inc., et al.*, 8 FCC Rcd 2448, 2449), involving a license renewal application, the Commission wrote:

"[I]t is important that the Commission be provided as full a record as possible to evaluate allegations of...indecent programming. Consequently the Commission requires (1) a tape, transcript, or significant excerpts of the program...Moreover, Allegheny has not provided a tape, transcript or significant portion of the broadcast in question which would permit the Commission to make an independent determination...." [Underline added]

In 1996, long after the FCC had notice of shock jock Howard Stern's behavior on the air and could have been taping the program itself, the FCC brushed off citizen objections, based on allegations of obscenity and indecency, to the merger of Infinity Broadcasting Corporation and Westinghouse Electric Corporation:

Neither Cox nor [Former Mass. Governor] Peabody has provided a tape, transcript or significant portion of any broadcast of the 'Howard Stern Show' which would permit the Commission to make an independent assessment of whether the programming was indecent or obscene. Absent this documentation, Cox and Peabody fail to raise a substantial and material question of fact concerning indecent or obscene programming." *In re Applications of Stockholders of Infinity Broadcasting Corp., et. al.*, 12 FCC Record 5012, 5015-5016 (1996).

In a study by Milagros Rivera-Sanchez ("How Far is Too Far? The line Between 'Offensive' and 'Indecent' Speech", *FCC Law Journal*, Vol. 49, No. 2, March 1997), the author described the FCC's "Complaint Investigation Process" in part as follows:

When the FCC receives an indecency complaint, staff at the Enforcement Division evaluate whether the complaint is properly documented. The FCC requires that a complaint includes the station's call letters, the date and time of the broadcast, and either a copy of the program or a partial transcript...If a complaint lacks any of these elements, the Commission usually asks the complainant to supply the missing information. If the complainant is unable to do so, FCC staff dismisses the complaint as "defective." [Underline added]

Morality in Media doubts that the FCC "usually asks the complainant to supply the missing information." In February 1996, Morality in Media president Robert Peters requested an FCC indecency investigation of a morning (after 6 a.m.) radio broadcast in New York City. His complaint was based on newspaper articles (which accompanied the complaint) describing the broadcast. One article said in part:

Perhaps it was the way [the shock jock] Mancow talked about having sex with Stern's wife. Perhaps it was the leering jokes about the physical maturation of Stern's daughters ("Call me Daddy")...or the little jingle to Stern that went, "Were you born an ---hole?" [D. Hinckley, "Raunchy Mancow blows in & udderly trashes Howard," *N.Y. Daily News*, 2/6/96]

Perhaps, the station did not tape this broadcast, but the FCC did not bother to find out. Nor did it ask Mr. Peters if he could obtain a tape. Rather, the FCC sent Mr. Peters a copy of its sheet, **FCC ENFORCEMENT OF PROHIBITION AGAINST OBSCENE AND INDECENT BROADCASTS**, with a cover letter from Norman Goldstein, Chief of Complaints and Investigations Branch, that said:

The enclosed appears to be responsive to the matters discussed in you correspondence. If you

have voiced a complaint, we hope our reply will be helpful to your understanding of why a Commission inquiry into the issue raised would not be warranted or permissible under existing law. If, however, the enclosed material does not adequately describe the FCC policies of interest to you, and if you will specify the additional information you need, we shall try to provide it. [Underline added]

On June 11, 1999, MIM general counsel Paul J. McGeedy participated in a Public Forum in Washington, D.C. to discuss the future of the FCC in the 21st century. He made three recommendations to the Commission, including:

First, we urge the FCC to abandon its present rule that it will not consider an indecency complaint against a licensee unless accompanied by a transcript or [ ]tape. We urge the FCC to do what it did in the Pacifica Foundation "Seven Dirty Words" case. ...[W]hen it receives a complaint of obvious merit that it request a transcript or videotape from the licensee. ...[A]n indecency situation can arise unexpectedly while a citizen is listening or viewing the program, and he or she is not contemplating a transcript or video. ...Even though the indecency as described is...patently ...offensive[, ] a form letter tells the citizen that his or her complaint will not be entertained. Such a procedure does not serve the public interest or the duty of the FCC to enforce the statute.

## **7. Monitoring TV programs**

In its indecency ENFORCEMENT policy sheet, the FCC states that it does not "independently monitor broadcasts for indecent material." Morality in Media does not expect the FCC to monitor every broadcast TV program 24 hours a day, but there is no constitutional or other valid reason for the FCC to refuse to monitor any TV program -- no matter how much evidence it has that the program often includes indecent content.

In some cases, evidence may come from viewer complaints. In other cases, evidence may come from news reports or studies

describing the sexual content or vulgarity in a particular program or genre of program (e.g., police dramas, "professional wrestling," sitcoms, soaps, talk shows, etc.).

According to a news item in Broadcasting & Cable ("Kids TV crackdown," 5/25/98), the FCC's Mass Media Bureau announced that:

[I]t is going to start watching some TV to ensure that stations comply with FCC limits on commercials aired during children's programming. Regulators say a review of current license renewal applications shows that 26% of the station's have exceeded the limit. "This level of noncompliance is unacceptable and must be remedied," the Bureau said in a public notice [Released 5/20/98]. Plans call for an audit program of unannounced, off-air monitoring of commercial stations and tabulations of commercials aired during children's programming.

If the FCC can monitor programs to protect children against too many ads, it can monitor programs to protect children and unconsenting adults in the privacy of their homes from programs known to be grossly vulgar or to include explicit sex talk, sexual activity or nudity.

## **8. Inquiry by Commission on its own motion**

The Commission is not required to wait for the perfect complaint from an ordinary citizen. Section 403 the Communications Act of 1934, As Amended, states:

The Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which complaint is authorized to be made...or relating to the enforcement of any provisions of this Act. The Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by a complaint....

## 9. 'V-chip' not a substitute for the indecency law

In response to a February 1998 Wirthlin Worldwide survey (commissioned by Morality in Media) question, "Do you think the [TV] industry rating system is an effective alternative to enforcing the broadcast indecency laws or do you think that the FCC needs to work harder to enforce the existing indecency laws?", 59% of adult Americans replied: FCC WORK HARDER.

We think that's good advice, because while the "V-chip" may help some parents, others will not use it at all or will not use it wisely. As former FCC Commissioner Andrew Barrett said: "The...V-chip is great for responsible parents, but it will [not] have any significant influence with kids whose parents are not responsible" ("Parents' Responsibility," *Broadcasting & Cable*, 8/26/96, at 24). And use of V-chips in the home can't protect a child at a friend or relative's house.

Furthermore, very few TVs now in U.S. homes are equipped with a V-chip; and, according to *Broadcasting & Cable* magazine ("The V-chip gets a ho-hum reception from consumers," 2/7/2000), "few customers have shown any interest" in the V-chip.

According to the TV Ownership Survey, conducted in 1996 by Statistical Research, 71% of U.S. homes also have two or more TV sets. Does Congress really expect most parents to rush out in the near future and buy two or more TV sets with V-chips??

But even if every parent replaces every TV in the home in the near future, uses the V-chip and uses it wisely, and ensures that his or her children never watch TV outside the home -- there is still a big problem for parents.

The TV rating system is patterned after the vague "age-based" ratings used by the MPAA, and it is TV producers who determine whether a particular program is appropriate for a particular age group. Since broadcast TV programs seldom get a TV-MA rating, these producers apparently think that almost every broadcast TV program is suitable for children 14 and older. Since most prime time broadcast TV programs are rated PG, these producers apparently also think most adult oriented prime time programs "may be unsuitable" -- but only for "younger children."

Many parents will disagree with these industry assessments, if they happen to be watching the programs with their children. But according to a Kaiser Family Foundation study (Release, 11/17/99), that isn't always happening:



The study also found that many parents are not exercising much control over their children's media use: among kids 8 and older, two-thirds (65%) have a TV in their bedroom and...nearly as many (61%) say their parents have no set rules about TV watching. Parents watch TV with their kids in this age range just 5% of the time. Nearly one of every four kids in this age group (24%) spends more than five hours a day watching TV...Even among the younger [ages 2-7] kids, one in three (32%) has a TV in their bedroom. More than a third (35%) of parents of 2-7 year-olds say the TV is on in their homes 'most of the time'...Parents watch TV with their [2-7 year olds] just 19% of the time.

Furthermore, there is also no independent review board to which parents can appeal and no enforcement mechanism. The fox is in charge of the henhouse, and NBC does not even rate its programs.

There is yet another problem with the TV rating system, for those who argue that it is an adequate substitute for enforcement of the broadcast indecency law. The rating system is designed for children, but in *Pacifica* (438 U.S. at 749-750), the Supreme Court pointed out that the indecency law has another purpose:

Patently offensive, indecent material presented over the airwaves confronts the citizen, not only in public, but also in the home, where the individual's right to be left alone plainly outweighs the First Amendment rights of an intruder. Because the broadcast audience is constantly tuning in and out prior warnings cannot completely protect the listener or viewer from unexpected program content. To say that one may avoid further offense by turning off the radio when he hears indecent language is like saying that the remedy for an assault is to run away after the first blow.

The TV rating system is not intended to protect adults, and it is not based on the "indecency" standard. Even if a rating was based on the indecency standard, the FCC has no business

delegating enforcement of the indecency law to a nongovernmental agency (i.e., the TV industry) accountable to no one but itself.

## CONCLUSIONS

In 1992, U.S. Senator Robert Byrd (D-WV) introduced a bill to extend the ban on broadcast indecency from 10 p.m. to 12 midnight. In his remarks on the Senate floor (*Congressional Record*, S-7308 et. seq., 6/2/92), he said in part:

Children are increasingly exposed to the profanity, the vulgarity, the violence, the crudeness that are broadcast on our television screens today. I believe the behavior of these children in the years ahead will reflect the behavior and standards to which television has exposed them in their most vulnerable and malleable years...With each dose of profanity, pornography, promiscuity, murder and other violence, a person becomes able to tolerate a little more of these moral poisons. Eventually, sensitivity and human decency are seriously undercut...[W]e can take the small step that I am proposing today to shield our children...We can do this before another generation of children comes of age hearing and witnessing, under the guise of harmless situation comedy and cliched adventure drama, language and pornographic images that still shock even more sophisticated of their parents. Indeed we can take this small step before the salacious, prurient imaginings of irresponsible scriptwriters of today become the norms of conversation and behavior a decade or two from now.

Senator Byrd's bill to extend the indecency ban until 12 midnight became law, but a U.S. Court of Appeals (D.C. Cir., 1995) invalidated it on equal protection grounds. Had the law not exempted some PBS TV stations from the 12 midnight ban, the Court of Appeals indicated it would have upheld the midnight ban.

Morality in Media supported Senator Byrd's 1992 bill, and was dumbfounded when Congress did not promptly correct the equal protection problem and enact new legislation to curb broadcast indecency until 12 midnight. The "small step" that Senator Byrd

proposed in 1992 -- i.e. extending the indecency ban to 12 midnight -- is needed now more than ever. Congress should also enact legislation to curb indecent programming on basic cable.

But unless Congress takes measures to ensure that the FCC fulfills its responsibility to enforce the existing indecency law, new indecency legislation will be an empty gesture. It is Congress' job to make policy. It is the FCC's job to carry it out. Now is the time for Congress to let the FCC know that it means business about curbing indecent TV programming -- before the decline in decency standards becomes a total collapse.